

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-184024

DATE: JAN 21 1976

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MATTER OF: Eligibility for Temporary Quarters Subsistence

DIGEST:

1. Although FTR para. 2-4.1c provides that a trip for seeking a permanent residence may be avoided if temporary quarters subsistence is to be authorized, the authorization of a house-hunting trip does not preclude an authorization for temporary quarters subsistence if circumstances warrant.
2. Fact that employee's family could have remained at former duty station rather than occupying temporary quarters at new duty station pending completion of new residence does not preclude authorization of temporary quarters subsistence allowance. Also, agency has discretion to determine whether family was "necessarily" occupying temporary quarters. Therefore, where employee had been authorized house-hunting trip and his family of five traveled with him to new station instead of waiting for carrier to pick up household goods, he is entitled to allowance for family since agency did not abuse discretion in authorizing and approving allowance.

An advance decision has been requested by an authorized certifying officer of the Department of Transportation, Federal Highway Administration, concerning the eligibility of Mr. Raymond A. Oakley's family for a temporary quarters allowance incident to a permanent change of station from Sevierville, Tennessee, to Warner Robins, Georgia, effective June 10, 1974.

By a travel order dated May 10, 1974, Mr. Oakley was authorized one round trip to his new duty station to seek residence quarters. The order also authorized him subsistence expenses for himself and his family while occupying temporary quarters. Mr. Oakley, accompanied by his wife, departed Sevierville, on May 19, 1974, and traveled to Perry, Georgia, to seek a new residence as authorized by his travel orders. During the trip the Oakleys arranged for the purchase of a dwelling then in the final stages of construction. On June 10, 1974, Mr. Oakley and his family left Sevierville and traveled to Perry by privately owned vehicle. On arrival later that day the Oakleys occupied temporary quarters because the dwelling, acquired as a result of the house-hunting trip, was not yet ready for occupancy. Also, Mr. Oakley

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reported to his new station. Because of carrier scheduling difficulties, Mr. Oakley's household effects remained at the Sevierville residence until June 19, 1974. On June 21, 1974, the household effects were delivered to the dwelling acquired during the week of May 19. Since this dwelling was not yet completed, the Oakleys continued to occupy temporary quarters until June 28, 1974, at which time they were able to occupy the new residence. A decision is requested as to the eligibility of Mr. Oakley's family for a temporary quarters allowance during the period June 10, 1974, through June 19, 1974, since they could have remained in their old house during that period and a house-hunting trip had been permitted.

Reimbursement of expenses incurred incident to the occupancy of temporary quarters in connection with a permanent change of station transfer is governed by 5 U.S.C. § 5724a(a)(3) (1970), which provides, in pertinent part, as follows:

"(a) Under such regulations as the President may prescribe * * * appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of all or part of the following expenses of an employee for whom the Government pays expenses of travel and transportation under section 5724(a) of this title:

* * * * *

"(3) Subsistence expenses of the employee and his immediate family for a period of 30 days while occupying temporary quarters when the new official station is located within the United States * * *."
(Emphasis added.)

The above statutory provision is implemented by Federal Travel Regulations (FPMR 101-7) (May 1973). Paragraph 2-5.2 of such regulations states, in relevant part, the following:

"2-5.2. Conditions and limitations for eligibility.

"a. Length of time allowed and location of new official station. Subsistence expenses of the employee for whom a permanent change of station is authorized * * * and each member of his immediate family * * *

shall be allowed for a period of not more than 30 consecutive days while the employee and family necessarily occupy temporary quarters * * *

* * * * *

"(c) What constitutes temporary quarters.
* * * [T]emporary quarters refers to any lodging obtained from private or commercial sources to be occupied temporarily by the employee or members of his immediate family who have vacated the residence quarters in which they were residing at the time the transfer was authorized." (Emphasis added.)

In addition paragraph 2-4. 1e of the Federal Travel Regulations provides that if, in connection with a permanent change of station, temporary quarters are to be authorized, a trip for seeking a permanent residence may be avoided. However, this statutory regulation does not state that house-hunting trips must, in all circumstances, be avoided if temporary quarters are to be authorized nor, alternatively, does it state that if a trip is authorized, temporary quarters cannot be. On the contrary, paragraph 2-4. 1a provides that an appropriate official of the agency which will be responsible for paying the travel and transportation allowances of an employee shall decide whether a trip seeking a permanent residence should be allowed. Moreover, under the provisions of paragraph 2-5. 1 of the Federal Travel Regulations it is recognized that, under equitable circumstances, a temporary quarters allowance may be authorized in addition to a house-hunting trip although, as a general policy, the allowable period for temporary quarters should be reduced or avoided if a trip to seek a permanent residence has been made. Thus, the regulations do not preclude the authorization and payment of a temporary quarters subsistence allowance in addition to a house-hunting trip.

As indicated above Mr. Oakley was authorized both a house-hunting trip and a temporary quarters subsistence allowance for 30 days. Although this authorization was within the administrative discretion, the question has arisen as to the amount of the temporary quarters subsistence allowance. That amount is dependent on whether Mr. Oakley's family "necessarily" occupied temporary quarters as required by FTR para. 2-5.2a (May 1973). Since Mr. Oakley was required to work in the Perry, Georgia, area while his permanent residence was in construction, the submission conceded that he "necessarily" occupied temporary quarters during the period

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in question. With respect to Mr. Oakley's family, however, an inquiry is made as to whether the presence of furniture at the Oakleys' Sevierville residence until June 19, 1974, precludes a finding that the family "necessarily" occupied temporary quarters from June 10 to 19, 1974.

Paragraph 2-5.1 of the Federal Travel Regulations provides for the exercise of administrative discretion in approving subsistence while occupying temporary quarters. In the instant case, the travel order directing Mr. Oakley's transfer authorizes subsistence expenses for Mr. Oakley and his family while occupying temporary quarters for 30 days. However, we have held that before payment may be made that an administrative determination must be made that the use of temporary quarters was incident and necessary to the transfer. B-164888, August 20, 1968. Nevertheless, we do not consider the provisions of FTR paras. 2-5.1 and 2-5.2a as perforce precluding such determinations until officials ascertain that the employee and his family have exhausted all alternatives to the occupancy of temporary quarters. Moreover, the fact that the employee has left his household goods in his old residence after he and his family have left such residence and have occupied quarters at the new station pending construction of a new house does not require a determination that the old house was not vacated or that the quarters at the new station were not temporary. B-177570, February 20, 1973. In the instant case, the voucher was administratively approved. The record shows that the Oakleys' occupancy of their new house was delayed because its construction was not completed. The shipment of household goods was delayed by the carrier's scheduling. Also, the transportation of the Oakley family presented some difficulty since it consisted of four children ranging in age from 3 years to 15 years in addition to Mr. Oakley and his wife. Finally, although temporary quarters subsistence allowance was authorized for 30 days, such quarters were occupied for only 19 days. Under such circumstances we do not view the administrative approval of the voucher as arbitrary, capricious, or an abuse of administrative discretion.

Accordingly, we regard Mr. Oakley and his family as eligible for subsistence while occupying temporary quarters during the period in question. Therefore, the temporary quarters subsistence item, if otherwise proper, may be certified for payment.

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**Deputy, Comptroller General
of the United States**